IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 27 OF 2004

S T A T E
through Public Prosecutor,
High Court of Bombay at Panaji,
Panaji, Goa. ... Appellant

versus

1. Suhasini Palyekar

2. Anita Palyekar

3. Chandrakan Palyekar

4. Narendra Palyekar

5. Namdev Satardekar,

All residents of
Kiran Pani, Palyem,
Pernem-Goa. ... Respondents

Mr. S. N. Sardessai, Public Prosecutor for the State/Appellant.

Mr. J. P. Mulgaonkar, Advocate for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 25TH AUGUST, 2005.

ORAL JUDGMENT

This is State's Appeal against the acquittal of the accused under Sections 323, 325, 504 and 506 r/w 34 I.P.C. by Judgment/Order dated 12-12-2003 of the learned J.M.F.C., Pernem.

2. The case of the prosecution was that on 18-3-1997 at about 8.00 hours at Kiranpani, Pernem, the accused in furtherance of common intention abused PW4/Rajaram Palyekar and his family members with bad words, and threatened them with dire consequences and assaulted them with dandas as a result of which PW5/Sadguni Palyekar alias Bandini Arolkar received grievous injuries whilst others received simple injuries.

3. In support of their case, the prosecution examined as many as 11 witnesses. PW2/Manohar Palyekar and PW4/Rajaram Palyekar are brothers and were injured in the incident. PW5/Sadguni Palyekar is the daughter of PW2/Manohar Palyekar and was also injured. PW7/Sulochana Palyekar is the wife of PW4/Rajaram Palyekar and was also injured. PW6/Laxmi

Gadekar is another witness who is alleged to have been present. PW1/Subhash Tari is a panch witness who is said to be related to the family of the Complainant-PW4/Rajaram Palyekar. PW8/Dr.B. G. Talkar examined the injured. PW9/Tulsidas Gawandi appears to be the only independent witness who was examined by the prosecution. PW10/Subhash Narvekar,Head Constable and PW11/Pandurang Sawant were the Investigation Officers.

4. Most of the accused are no strangers to the family of the Complainant-PW4/Rajaram Palyekar. In fact, A-1/Suhasini Palyekar, A-2/Anita Palyekar, A-3/Chandrakant Palyekar and A-4/Narendra Palyekar are stated to be the children of the deceased brother of PW4/Rajaram Palyekar. The accused nos.1 to 4 as well as PW2/Manohar Palyekar and PW4/Rajaram Palyekar are co-tenants in respect of a property surveyed under no.211/2 belonging to one Dada Deshprabhu and it is stated that the families of the accused as well as of the Complainant reside in the same property although in the evidence of the prosecution witnesses there is reference to the house of the said accused as being situated in the said property. The groups of the accused

as well as PW4/Rajaram Palyekar are not only tenants in relation to the said property but were on enemical terms for almost two decades prior to the incident when the accused nos. 1 to 4 are alleged to have assaulted the father of PW4/Rajaram Palyekar. However, what turns out from the evidence of PW4/Rajaram Palyekar is that A-3/Chandrakant Palyekar had filed a case against him(PW4/Rajaram Palyekar) and his brother PW2/Manohar Palyekar in which they were convicted with fine. In other words, the incident took place between the two groups of families closely related but who were admittedly on enemical terms for a considerable period of time prior to the incident and, therefore, there was all the more reason why the evidence of the prosecution witnesses had to pass the test of a close scrutiny.

5. The learned J.M.F.C. by the impugned Judgment has acquitted the accused, interalia, in the absence of independent and reliable evidence.

6. Mr. J. P. Mulgaonkar, the learned Counsel of the said accused submits that the view taken by the learned Magistrate was a plausible view, based on evidence adduced by the

prosecution and, therefore, this Court ought to be slow in interfering with the said Judgment of acquittal. There can be no quarrel with the aforesaid submission of the learned Counsel Mr. Mulgaonkar. Nevertheless, it does appear that the Judgment of the learned J.M.F.C. is rather functionary in that it has not discussed the evidence of the prosecution witnesses in detail which ought to have been done by him.

7. Mr. S. N. Sardessai, the learned Public Prosecutor submits that although no independent witnesses have been examined by the prosecution, all the injured persons, namely, PW2/Manohar Palyekar, PW4/Rajaram Palyekar, PW5/Sadguni alias Bandini Arolkar and PW7/Sulochana Palyekar have been examined and their evidence has been corroborated by PW8/Dr. B.G.Talkar and, therefore, a conviction against the accused ought to have been recorded by the learned J.M.F.C.

8. Admittedly, the incident occurred between 5 members of both the families on either side. The family of the accused had 3 males in their group while the family of PW4/Rajaram Palyekar had 3 females in their group. Although, the plea of the

accused in their statement was one of denial simpliciter it was suggested in the cross of cross-examination of witnesses that there was a scuffle between both the groups.

9. Admittedly, no independent witnesses have been examined by the prosecution to support the evidence of the injured persons. Not that there were no independent witnesses. It can be seen from the evidence of PW2/Manohar Palyekar that there were about 25 persons who were present when the incident took place. PW2/Manohar Palyekar was unable to tell the names of the said 25 persons. It is also in evidence of PW4/Rajaram Palyekar that there are about 6 to 7 houses at some distance from the place of incident. However, he has stated that no neighbours gathered but at the same time he stated that there were about 20 labourers and again he tried to explain that the said labourers had left the place after completion of work. The evidence of PW2/Manohar Palyekar as well as PW4/Rajaram Palyekar clearly gives an indication that at the time of the fight there was lot of noise made and there were independent witnesses who might have seen the incident. The Investigating Agency took no steps to record the statements of such witnesses.

Although, both PW2/Manohar Palyekar as well as PW4/Rajaram Palyekar have stated that they were assaulted with dandas by the accused there is no whisper in the evidence of the Investigating Officers, namely, PW10/Subhash Narvekar or for that matter PW11/Pandurang Sawant as to what happened to the said dandas. In fact, there is no whisper in their evidence whether they had at all made efforts to recover the said dandas either from the scene or from the possession of the accused. Apparently, there were no dandas at the scene because what was recovered was only a slipper and a piece of ribbon belonging to PW5/Sadguni alias Bandini Arolkar and which slipper though attached as of payal make turned up to be of paragon make. As far as the medical evidence is concerned, PW8/Dr. B. G. Talkar had opined that the injuries on PW5/Sadguni alias Bandini Arolkar, PW2/Manohar Palyekar and PW4/Rajaram Palyekar could have been caused either by a stone, round stone, weapon or blunt object. He had also opined that the injury on PW5/Sadguni alias Bandini Arolkar could also be caused by blunt weapon such as danda but in the absence of any danda being attached or for that matter any weapon being shown to him, it was not possible to opine that the injury was caused with

a particular danda or not and this was more so because no description of dandaa regarding size dimension were not given by the prosecution witnesses. The non attachment of the weapons of offence allegedly used in the course of assault has certainly further weakened the case of the prosecution.

10. As far as the motive is concerned, I have already referred to the enemity between the parties but the immediate cause appears to have been a demolition of a hut erected by PW4/Rajaram Palyekar in the said property and let out to PW9/Tulsidas Gawandi for the occupation of his labourers as the said PW9/Tulsidas Gawandi was extracting sand at that place but I must hasten to add there is no acceptable evidence on this aspect as well. PW4/Rajaram Palyekar has stated that on 17-3-1997, he had been to the suit property and had found the hut erected by him demolished and he had seen the persons taking away the materials of the demolished hut, namely, the palm leaves and wooden poles. PW4/Rajaram Palyekar stated that he inquired in the village as to who had taken the said materials and the people informed him that PW9/Tulsidas Gawandi, the sand extractor had demolished the hut and taken

away the hut materials. One fails to undertstand as to why PW4/Rajaram Palyekar had to make inquiries in the village as to who had taken away the said materials in case he had seen the persons demolishing the hut and taking away the materials of the same. PW9/Tulsidas Gawandi has not at all supported the version of PW4/Rajaram Palyekar as regards the demolition of the said hut. Firstly, one fails to understand as to why a hut which was constructed by PW4/Rajaram Palyekar and let out to PW9/Tulsidas Gawandi should have been demolished by the latter. PW9/Tulsidas Gawandi has stated that on 18-3-1997 he had gone to erect the hut as on the previous day it was demolished. In the same breath, he has stated that he had demolished the hut and had gone to reconstruct on the same day i.e. on 18-3-1997. PW9/Tulsidas Gawandi has further stated that he came to know at about 6 p.m. on 18-3-1997 that there was quarrel between the accused and the Complainant(PW4/Rajaram Palyekar) through the labourers. If PW9/Tulsidas Gawandi had gone to the property to erect the hut on 18-3-1997 then certainly he must have been present in the property at the time when the alleged incident took place but has chosen not to support the case of the prosecution. As per PW4/Rajaram Palyekar when he

found that the hut was demolished he erected 4 bamboos as pillars and then erected a hut and on 18-3-1997 at about 7.45 p.m. when he visited the property alone he saw 4 bamboo pillars erected by him earlier day were removed and in which place a hut was erected without his permission. His evidence gives an impression that at the place of the demolished hut he had erected only 4 pillars and on its place another hut had come up. PW4/Rajaram Palyekar has further stated that thereafter he inquired from the labourers who were extracting the sand as to who had removed the 4 pillars of bamboo which were erected by him and he pointed out the house of the accused persons who were staying nearby and at that time all 5 accused persons came towards him and started abusing him. As far as PW2/Manohar Palyekar is concerned, he has stated that on 18-3-1997 the Complainant-PW4/Rajaram Palyekar had come to the spot and thereafter his sister-in-law-PW7/Sulochana Palyekar, his daughter PW5/Sadguni alias Bandini Arolkar had come to the spot after 5 minutes and when he arrived at the spot the Complainant asked the workers as to who had erected the second hut and at that time A-3/Chandrakant Palyekar, A-4/Narendra Palyekar and A-5/Namdev Satardekar came with the dandas and

A-3/Chandrakant Palyekar gave a danda blow on his left hand and A-5/Namdev Satardekar gave a danda blow on his right hand and when his daughter PW5/Sadguni alias Bandini Arolkar came for rescue she was assaulted by A-3/Chandrakant Palyekar by giving a danda blow on her hand due to which she fell down. It is difficult to accept the versions of either PW2/Manohar Palyekar or for that matter PW4/Rajaram Palyekar that the accused came from their houses only because the labourers who were present there had pointed out to the houses of the accused. On the other hand, it is quite probable that it is PW4/Rajaram Palyekar who must have certainly gone to question the family of the accused as regards the demolition of the hut and it is at that time that the incident must have started. The genesis of the incident as described by PW4/Rajaram Palyekar is that when the said labourers pointed out to the houses of the accused, all the 5 accused came towards him and started abusing him by saying "Chediyecha Potnecha, hi khop ami banli". When he inquired from them why they had removed the bamboo pillars as they had erected the hut without their permission for which they started abusing him loudly and then lifted the dandas. Apparently, PW2/Manohar Palyekar initially was not present

when PW4/Rajaram Palyekar went to the scene and must have certainly reached later and for that reason has not described the abuses as given by the accused and as described by PW4/Rajarwam Palyekar. Apparently, PW5/Sadguni alias Bandini Arolkar, PW6/Laxmi Gadekar and PW7/Sulochana Palyekar had gone to pluck cashew apples and reached the spot only after they heard the noise and reached the place of incident much later and, therefore, their version that they saw the assault either on PW2/Manohar Palyekar or for that matter PW4/Rajaram Palyekar could not be accepted. There is no corroboration in the version given by PW2/Manohar Palyekar and the version given by PW4/Rajaram Palyekar in all material particulars and not only that there were omissions and exaggerations in their version on account of which their evidence was not accepted for the purpose of convicting the accused. In my view, considering the nature of overall evidence produced by the prosecution the learned J.M.F.C. was justified in giving benefit of doubt to the accused and acquitting them for the offences for which they were charged. As already stated, the view held by the learned J.M.F.C. is a plausible view based on the evidence produced and, therefore, I find there is no merit in

this Appeal and consequently the same is hereby dismissed. The Bail Bonds executed by the accused shall stand discharged.

N. A. BRITTO, J.

RD.